

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

<b>ADAN DELEON</b>	§	
	§	
<b>v.</b>	§	<b>CIVIL ACTION NO. 2:21-cv-143</b>
	§	<b>JURY</b>
<b>NUNECES COUNTY, TEXAS; and</b>	§	
<b>BOBBY JOE BENAVIDES, <i>Individually</i></b>	§	

**PLAINTIFF’S FIRST AMENDED REQUEST FOR ENTRY OF DEFAULT  
AGAINST BOBBY JOE BENAVIDES**

**TO THE CLERK OF SAID COURT:**

COMES NOW Adan DeLeon, Plaintiff in the above-referred cause, filing pursuant to Fed.R.Civ.P. 55(a)(1)<sup>1</sup> this *Plaintiff’s First Amended Request for Entry of Default Against Bobby Joe Benavides*, and showing in support thereof unto this Court as follows:

1. On July 13, 2021, Adan DeLeon (hereinafter “Plaintiff” and/or “DeLeon”), filed his *Plaintiff’s Original Complaint*, wherein Plaintiff alleged, *inter alia*, that Defendant Bobby Joe Benavides (hereinafter “Benavides”) used and/or allowed to be used excessive and/or unnecessary force against Plaintiff while Plaintiff was being detained in the Nueces County Jail.
2. After significant effort, Defendant Benavides was served with process on December 29, 2021, requiring Defendant to file its answer on or before January 19, 2022. That day has passed without an answer being filed. Defendant is therefore in default and entry of a default is proper.

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<sup>1</sup> Such rule concerning “Entering a Default” (as opposed to entering a default judgment) reads as follows:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s *default*.

Fed.R.Civ.P. 55(a)(*emphasis added*).

3. To Plaintiff's knowledge and belief, and in "compliance" with Fed.R.Civ.P. 55(b)(1) concerning entry of a default *judgment* (such judgment is not being requested at this time) by the Clerk, Defendant Benavides is neither a minor nor an incompetent person.<sup>2</sup>

4. Because the actual damages against Defendant Benavides are not at this time ascertainable in a "sum certain," Plaintiff is not asking for an entry of a default judgment from the Clerk and will address such damages at a later date.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff, after waiting an appropriate time for response, requesting from the Clerk an entry of default against Defendant Benavides and for any other relief to which Plaintiff may show himself entitled.

Respectfully submitted,

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*Attorney for Plaintiff*

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<sup>2</sup> Further and while Fed.R.Civ.P. 55(b)(1) does not specifically require such, Plaintiff would further represent that he does not believe Defendant Benavides to be a member of the military.

### **NOTICE OF ELECTRONIC FILING**

The undersigned counsel hereby certifies that he has electronically submitted for filing a true and correct copy of the above and foregoing in accordance with the Electronic Case Files System of the Southern District of Texas on the 24<sup>th</sup> day of April, 2022.

/s/ Christopher J. Gale

Christopher J. Gale

### **CERTIFICATE OF SERVICE**

I hereby certify that on this the 24<sup>th</sup> day of April, 2022, the above and foregoing was sent to the following counsel of record by the means indicated below:

Melissa Vela  
Matthew Dennis  
Jenny Dorsey  
Nueces County Attorney  
901 Leopard Street, Room 207  
Corpus Christi, Texas 78401

***Via E-file Notification***

Bobby Joe Benavides  
505 Marie St.  
Robstown, Texas 78380

***Via CM-RRR***

/s/ Christopher J. Gale

Christopher J. Gale